

Remarks

Claims 1-23, 26, and 27 were pending in the application. Claims 1-23, 26, and 27 were rejected. No claims were merely objected to and no claims were allowed. By the foregoing amendment, claim 27 is canceled, claims 1, 14, and 19 are amended, and claim 28 is added. No new matter is presented.

Request for Reconsideration and Withdrawal of Finality of Action

Applicants request reconsideration of the finality of the July 16, 2008 Office action as being premature and requests the finality be withdrawn.

If necessary for consideration, Applicant requests that this request be treated as a petition.

The Office action asserted that Applicant's amendment necessitated the new ground(s) of rejection.

MPEP 706.07(a) states that a "final rejection is improper where there is another new ground of rejection introduced by the examiner which was not necessitated by amendment to the claims." MPEP 8, Rev. 6, p. 700-83, col. 2 (9/2007). That section further provides that the action "should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed." *Id.* at 700-82, col. 2.

In the present application, several issues are apparent. First, the Office applied Zabinski et al. to claim 1 even though it did not previously apply Zabinski et al. to claim 24 which was rewritten in independent form as claim 1. Second, the Office had not, previously, cited a source for the presence of aluminum and vanadium of claim 15 but newly cites a passage in Bergmann et al.